MANSOR SULAIMAN & ANOR.

v.

LIAW KET SANG

HIGH COURT MALAYA, TEMERLUH
LAMIN MOHD. YUNUS J
[ORIGINATING MOTION NO. 25-6-90]
19 JUNE 1992

CIVIL PROCEDURE: *Memorandum of appeal - Time period for filing - Calculation of fourteen day period - O. 55 r. 2 Rules of the High Court 1980, O. 49 Subordinate Courts Rules 1980.*

CIVIL PROCEDURE: *Stay of execution - To show special circumstances in support of application.*

The applicant asked for (i) leave to file and serve the memorandum of appeal out of time, and (ii) for stay pending disposal of the appeal. The applicant had filed the appeal record (probably containing the memorandum of appeal) some 44 days after the receipt of Form 141 from the Court. Counsel for the applicant protested in his affidavit stating he was entitled to a six week period under O. 49 r. 3A (3) of the Subordinate Court Rules to file and serve the memorandum.

Held:

[1] The period given to file in the memorandum of appeal is fourteen days from the date of receipt of notice from the Court of Form 141. See O. 55 r. 2(1) Rules of the High Court 1980 and *Hj. Abdul Ghani b. Kesah v. Tuan Ahmad b. Tuan Man* [1990] 3 MLJ 45.

[2] Since Form 141 was served on the applicants' solicitor on 10 October 1989, the memorandum ought to have been filed by 24 October 1989. The appeal record believed to contain the memorandum was instead filed on 24 November 1989 and no explanation was given by said Counsel for the delay.

[3] There was no special circumstances shown in the applicant's affidavit supporting the application for stay of execution pending disposal of the appeal. A mere statement to the effect that there is a good defence is insufficient to support the present application.

[Application dismissed on both counts.]

Case referred to:
Hj. Abdul Ghani b. Kesah v. Tuan Ahmad b. Tuan Man [1990] 3 MLJ 45 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 55 r. 2(1)
Subordinate Courts Rules 1980, O. 49 r. 3A(3)

For the applicants - R.K. Nathan; M/s. R.K. Nathan & Co.
For the respondent - Gazel Ong; M/s. Kam Woon Wah

JUDGMENT

Lamin Mohd. Yunus J:

This is an application for leave to file a memorandum of appeal out of time and also for stay of execution pending the disposal of the appeal. The application was heard on 11 April 1990 and on the same day I dismissed it with costs. The brief facts of the case and my grounds

of decision are as follows. Some time in 1986 the plaintiff who is the respondent in the present application filed a suit against the applicants (the defendants) in the Kuala Lipis Sessions Court *vide* Civil Action No. 25-73-86. On 18 September 1989 judgment was delivered in favour of the plaintiff and on 29 September 1989 the defendants/applicants filed a notice of appeal appealing against the said decision. On 10 October 1989 the firm of learned Counsel for the defendants/applicants was served with Form 141 by the Court informing them that the notes of evidence and the grounds of judgment were ready and to forward stamps on *praecipe* amounting to RM46.50. By a letter dated 24 November 1989 the firm of learned Counsel for the defendants/applicants filed the appeal record which I believe must have contained the memorandum of appeal. That was some 44 days after the service of Form 141. Prior to the present application I had heard a similar application *vide* High Court (Temerluh) Originating Motion No. 25-2-90 now reported as *Hj. Abdul Ghani B. Kesah v. Tuan Ahmad bin Tuan Man* [1990] 3 MLJ 45 wherein I decided that the fourteen day period within which the memorandum of appeal must be filed must be calculated from the day of the receipt of the notice from the Court informing the appellants that the notes of evidence and the grounds of judgment were ready. Rightly, therefore in the present application, the fourteen days as required under O. 55 r. 2(1) of the Rules of the High Court 1980 must be calculated from 10 October 1989 that is the day Form 141 was served. So by 24 October 1989 the memorandum of appeal ought to have been filed. On 20 December 1989 the appeal record was returned by the Court to the learned Counsel for the defendants/applicants because O. 55 r. 2 of the Rules of the High Court 1980 had not been complied with and that the memorandum of appeal should have been filed within 2 weeks upon receipt of Form 141 and that was not done. Despite having been informed by the Court that in essence the fourteen day period must be calculated from the date of receipt of Form 141, the said learned Counsel had not taken the trouble to give any explanation at all in his affidavit as to the delay. His application was for leave to file and serve the memorandum of appeal **out of time** and yet oddly enough in his affidavit he was still harping on the point that he was entitled to the 6 weeks under O. 49 r. 3A(3) of the Subordinate Courts Rules, suggesting that he was in time. Surely he need not have to wait for an analysis of the rules as I have done in the case of *Hj. Abdul Ghani* before taking the initiative to comply with them. Even after having been informed by the Court that he was out of time, that too was not sufficient to awaken him to the realisation that he was expected to come forward with an explanation for the delay if his application was to be considered at all. Also no special circumstances shown in the affidavit in order to support the application for stay. Merely to say that the applicants have a good defence is not good enough to support the present application. In the circumstances I was of the view that this was a proper case in which I must exercise my discretion against the applicants on both counts. I therefore ordered accordingly.

Also found at [1992] 3 CLJ 1726